

**REMARKS**

Claims 15,16 and 23-25 are pending. No claims are herewith canceled or added. Thus, with the entry of this amendment, claims 15, 16 and 23-25 will be active in this case. Applicants argue that the foregoing amendments should be entered as they are made to insert required SEQ ID NO identifiers, pursuant to the Examiner's suggestion or are made to put this case in condition for allowance.

**Miscellaneous**

Applicants assert that claim 25 has been amended to correct a typographical error. The protein claimed in claim 25 is not a different protein from the protein claimed in the other claims. All the claims are directed to a protein from VZV VP26.

**Rejection under 35 USC § 112**

The Examiner has rejected claims 15, 16 and 23-24 for the alleged reason that claim 15 lacks a sequence identifier for the intended amino acid region of AA 12 to 235. According to the Examiner, this rejection affects the dependent claims as well. In response, applicants herewith amend the claims to add a sequence identifier and simultaneously submit a sequence listing and amend the specification. Applicants respectfully request the Examiner to enter these amendments.

The Examiner further rejects the same claims, arguing that the term "portions" is indefinite. Applicants believe this rejection is overcome with the addition of a sequence identifier, pursuant to the Examiner's suggestion.

In view of the addition of SEQ ID NO: 7 to the rejected claims and to claim 25, applicants believe the Examiner's concerns have been satisfied and that the claims meet all the requirements of 35 USC § 112, first and second paragraphs. Withdrawal of the outstanding rejection of claims 15, 16 and 23-24 and any rejection that might apply to claim 25, is respectfully requested.

Rejection under 35 USC § 103

The Examiner has rejected claims 15-16 and 23-24 under 35 USC § 103 over Davison *et al.*, *J. Virology* 67: 1759-1816 (1986). According to the Examiner, Davison (1986) teaches a 235 amino acid long polypeptide, which is VP26. The Examiner acknowledges that fragments are not taught but argues that one of skill in the art would have been motivated to slice the protein into multiple portions to be used in a diagnostic assay as an immunoreactive peptide. The Examiner further opines that applicants have not shown unexpected results.

Applicants respectfully but vigorously traverse this rejection. Davison (1986) does not guide the skilled artisan toward SEQ ID NO:7 or any fragment thereof. The fact that one of skill in the art might be motivated to look for immunoreactive fragments does not suggest that one should look for the fragment that is SEQ ID NO:7 or any portion thereof. At best, the Examiner has set forth an obvious to try argument, which is not the proper standard for obviousness in the United States. Because the Examiner has not lodged a proper *prima facie* case of obviousness, it is not necessary for applicants to provide evidence of unexpected results.

In view of this explanation, applicants respectfully request the Examiner to withdraw the rejection for obviousness over Davidson (1986).

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date: June 13, 2006

HELLER EHRMAN LLP  
1717 Rhode Island Avenue, NW  
Washington, DC 20036-3001  
Telephone: (202) 912-2142  
Facsimile: (202) 912-2020

By Patricia D. Granados

Patricia D. Granados  
Attorney for Applicant  
Registration No. 33,683

Customer No. 26633